

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

EVANSVILLE GREENWAY AND REMEDIATION)	
TRUST, a Qualified Settlement Trust,)	
)	
Plaintiff,)	
)	
v.)	3:07-cv-66-DFH-WGH
)	
SOUTHERN INDIANA GAS AND ELECTRIC)	
COMPANY, INC., an Indiana Corporation; et al.,)	
)	
Defendants.)	
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EVANSVILLE GREENWAY PRP GROUP,)	
)	
Third-Party Plaintiff,)	
)	
v.)	
)	
GENERAL WASTE PRODUCTS, et al.,)	
)	
Third-Party Defendants.)	

ORDER GRANTING MOTION TO COMPEL

This matter is before the Honorable William G. Hussmann, Jr., United States Magistrate Judge, on the Motion to Compel filed by defendants Mead Johnson Nutrition Company and Heritage Coal Company on April 15, 2009. (Docket Nos. 417-18). A Memorandum of Law in Opposition to Motion to Compel was filed by plaintiff, Evansville Greenway and Remediation Trust, on May 4, 2009. (Docket Nos. 432-34). A Reply in Support of Motion to Compel and Request for Oral Argument were filed on May 13, 2009. (Docket Nos. 437-38).

The Magistrate Judge, being duly advised, now **GRANTS** the Motion to Compel and orders that the Settlement Agreement and exhibits and attachments at issue be disclosed subject to a protective order.¹

In this case, the Settlement Agreement at issue was executed by Mr. Trockman and General Waste Products, Inc., third-party defendants in this case. Mr. Trockman has at various times in this and prior litigation given statements concerning his memory of activities at General Waste Products. Some of these statements and depositions occurred before the signing of the Settlement Agreement and some occurred thereafter. Under Rule 408(b), evidence not otherwise admissible as offers of compromise may be admitted into evidence if necessary to prove a witness's bias or prejudice, among other things. While it is far from clear that this matter will be admitted into evidence, for purposes of this discovery order the agreement must be disclosed because of the existence of a permitted use arising out of the execution of the document. (Specifically, inquiry as to whether the execution of the Settlement Agreement may have a bearing on Mr. Trockman's bias or prejudice.) In addition, issues remain before this court concerning the standing of the Trust to bring this action. Those issues cannot be completely resolved by the court without the parties' opportunities to understand the existence of the Trust and its relationship to the controversy at issue. Disclosure of the Settlement Agreement is necessary for these purposes.

¹The Request for Oral Argument (Docket No. 438) is **DENIED**.

The Settlement Agreement is a confidential document entitled to some protection from disclosure to the general public, at least at this stage of the litigation. Therefore, the following protective order shall issue:

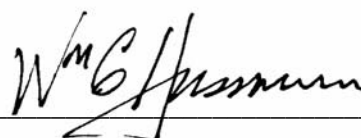
Copies of the protected Settlement Agreement shall be produced to the attorneys who are counsel of record in this matter only. Those attorneys shall not copy or otherwise disseminate the Settlement Agreement to any other party or person without the express permission of the court. Counsel shall be entitled to summarize the contents of the document and to question witnesses necessary to explore the Trust's existence, and to cross-examine Mr. Trockman, as necessary. In the event any party wishes to file a motion with the court which requires examination of that document, the document shall be filed under seal. As required in this Circuit, a member of the public may challenge the necessity of sealing.

The Settlement Agreement and exhibits and attachments thereto shall be provided to defendant's counsel within seven (7) days of the date of this Order.

You are hereby notified that the District Judge may reconsider any pretrial matter assigned to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(A) where it is shown that the order is clearly erroneous or contrary to law.

SO ORDERED.

Dated: June 9, 2009



WILLIAM G. HUSSMANN, JR.
Magistrate Judge

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